IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/12/2002

Coram

THE HON'BLE MR.JUSTICE R.JAYASIMHA BABU
AND
THE HON'BLE MR.JUSTICE E.PADMANABHAN

WRIT PETITION No. 393 of 1990
and W.P.Nos. 394, 4859 AND 4860 OF 1990
....

WP.Nos:393 & 394/90

G.Ramanujam ..Petitioner
in both the WPs

-Vs-

1. Union of India,
rep. By the Secretary to Govt.,
Ministry of Law and Justice
(Department of Justice) New Delhi

2. State of Tamil Nadu
rep by Secretary to Govt.,
Govt., of T.N.,
Public (Spl.B) Dept.,
Chennai-9

3. The Accountant General, Chennai-6

4. The Registrar, High Court,
Chennai-104 ..Respondents

WP.Nos:4859 and 4860/90

C.Venkataraman .. Petitioner
in both WPs
Vs.

The Union of India
rep. By Secretary to Government,
Ministry of Personnel,
Public Grievances and Pensions
Department of Personnel and Training
New Delhi. ..Respondent in

both WPs.

For petitioner :: Mr.Vijay Narayan

For respondents:: Mr.V.T.Gopalan
Additional Solicitor General
assisted by Mr.J.Madana Gopalrao
SCGSC
Mr.S.T.S.Murthy
Spl.G.P. For R2 and R4

Writ Petitions preferred under Art.226 of The Constitution of India
seeking for the issue of a writ of Mandamus/Declaration as stated therein.

:O R D E R

E.PADMANABHAN.J.,
I RELIEFS:
In W.P.No.393 of 1990, Mr.Justice G.Ramanujam, formerly a Judge of this Court and who was the Vice Chairman of the Central Administrative Tribunal has prayed for the issue of a writ of mandamus directing the respondents to sanction and grant his retirement benefits being (i) additional death-cum-retirement-gratuity of Rs.20,000/= over and above Rs.30,000/= already paid for the reasons set out in paras 7 and 8 supra; and (ii) commuted value of half of the enhanced pension after giving credit to the amount already paid for the reasons set out in para 3 supra; and (iii) the total amount of pension and pension equivalent of gratuity deducted from salary from 1.11.1985 till 31.5.19 88 for the reasons set out in paras 5 and 6.

2. Writ Petition No.394 of 1990 is again by Mr.Justice G.Ramanujam for the issue of a writ of mandamus directing the respondents to sanction and grant the total amount of pension and Pension Equivalent of Gratuity deducted from the salary of the petitioner from 1.11.1985 till 31.5.1988 when the petitioner held office as the Vice Chairman of the Central Administrative Tribunal, Madras.

3. In W.P.No:4859 of 1990 the petitioner Thiru C.Venkataraman who was formerly member of the Indian Audit and Accounts Service and who held the post of Special Secretary in the Ministry of Finance and Ex-officio Secretary to the Government of India, Department of Railways and who came to be selected and appointed as Member of the Additional Bench of the Central Administrative Tribunal has prayed for the issue of a writ of declaration to declare that the proviso to Rule 3 of the CAT (Salaries and Allowances and Condition of Services of Chairman,Vice Chairman and Members) Rules 1985 as arbitrary, void, illegal and unconstitutional.

4. In W.P.No.4860 of 1990, the very same petitioner Mr.C. Venkatarman has prayed for the issue of a writ of certiorarified mandamus calling for the records of the respondent in proceedings No.A-12026/3/87-80 dated 20.4.1990 quash the same and direct the respondent to fix the pay of the petitioner from 1.11.1985 as Member, Central Administrative Tribunal without

making any deductions of gross pension and/or pension equivalent of gratuity from the pay of the post with all arrears of pay with effect from 1.11.1985.

II CONSOLIDATING WRIT PETITIONS:

5. Since in all the above four writ petitions identical claims have been made and the contentions being identical contentions are being advanced for identical reliefs, at the request of the counsel for the petitioner and respondents, the above four writ petitions were consolidated and taken up for hearing on various dates.

6. Heard Mr.Vijay Narayan, learned counsel appearing for the petitioners in all the four writ petitions, Mr.V.T.Gopalan, Additional Solicitor General, appearing for the Union of India, assisted by Mr.J. Madana Gopal Rao, and Mr.T.Ravikumar, Additional Central Government Standing Counsel appearing respectively for Respondent Nos.1 and 3 and Mt.S.T.S.Murthy, learned counsel appearing for the respondent Nos.2 and 4 viz.,

III - PETITIONER'S CASE IN W.P.No.393 & 394 OF 1990

7. According to the petitioner in W.P.Nos:393 and 394 of 1990 he was a permanent Judge of the Madras High Court between 11.7.1969 and 1 .6.1985 and he demitted the office after putting Fifteen years, Ten months and twenty days of service on attaining the age of 62 years. On 29.11.1985 he was also granted death-cum-retirement gratuity in addition to the grant of pension of Rs.22,400 per annum or Rs.1866.66 per month. The petitioner has also commuted the pension and he was paid Rs.1,02,443.40 on 16.4.1986 and the commuted value being Rs.11,200/= being one half of the pension of Rs.22,400/= per year. With effect from 11.1.1986 pension of all the High Court Judges both serving and retired was raised to Rs.4,000/= per month and the petitioner who was being paid Rs.3066.67 per month was paid Rs.4000/=. The petitioner's request for commutation at the revised rate has not been permitted though it is permissible in law.

8. The petitioner after superannuation was appointed as Vice Chairman of the Madras Bench of the Central Administrative Tribunal with effect from 1.11.1985 on a monthly salary of Rs.3500/= as being the scale of pay applicable to High Court Judges. The petitioner demitted the said office on 1.6.1988 after putting two years and seven months of service in the said post. According to the petitioner, during his tenure as Vice Chairman between 1.11.1985 and 31.3.1988, the entire pension paid to him has been deducted from his salary in the post of Vice Chairman on the ground that pay which together with pension and PEG should not exceed a Judge's salary of Rs.3500/= per month before 31.3.1986 and Rs.8000/= after 1.4.1986.

9. It is the case of the petitioner that pension is paid for the services already rendered as Judge of High Court and that cannot be taken as a consideration for services rendered after retirement. A retired Judge by not taking up any employment will get his full pension sitting at home. On employment if his pension is deducted from the salary it is as if he is not getting any pension at all for the past services. According to the petitioner for the work done by him as Vice Chairman he is entitled to get Rs.8000/= as salary. It is pointed out that if a retired High Court Judge is appointed to

similar post he wil get a salary of Rs.4000/= after deduction of his pension of Rs.4000/=. Though both of them do the same work one gets Rs.8000/=, another gets Rs.4000/= as monthly salary. It is nothing but payment of unequal salaries for the same work. The pension which the petitioner is entitled to get cannot be taken into account while evaluating the services on reemployment. Proviso to Rule 3 of CAT(Salaries and allowances and conditions of services of Chairman, Vice Chairman and Members) Rules 1985, providing for contrary, is unconstitutional, void besides it is violative of Articles 14 as well as 16 of The Constitution.

10. According to the petitioner during his tenure as Vice Chairman in addition to his pension a sum of Rs.274/= was deducted from his salary as pension equivalent of gratuity (hereinafter referred as PEG). However, pursuant to the pronouncement of the Supreme Court holding that the deduction of DCRG from salary is not legal, the Government of India by Notification dated 27.12.1988 directed that in case of retired Judges already in reemployment as on 1.6.1988 and in whose case PEG was taken into account for fixing the initial pay, the pay should be refixed with effect from 1.6.1988 by ignoring the element of PEG.

11. The petitioner retired on 31.5.1988, a day before the said crucial date and therefore he has been denied of the benefit of the said Notification even though he was also a Judge on reemployment and PEG was deducted from his salary. Such discrimination between similarly situated persons merely based on the date of retirement has been held to be constitutionally bad by the Supreme Court in Nakara's case. The reason for exclusion of PEG equally applies to exclusion of pension as well.

12. According to the petitioner though he has servd more than 15 years, he was just paid Rs.30,000/= as DCRG while other judges of the High Court who came from Subordinate Judiciary had been paid Rs.50,000 /= even if they had put in less than five years of service as High Court Judges. It is discriminatory to pay DCRG at such a rate and there cannot be a discrimination between the directly appointed High Court Judges and District Judges elevated as High Court Judges and it offends Art.14.

13. The petitioner points out that when other Judges of the High Court who retired subsequently whose DCRG has been revised from Rs.30,000/= to Rs.50,000/= as per the amendment to the High Court and Supreme Court Judges conditions of Services Act, 1986 and the same was given effect from 1.11.1986, the Government of India had omitted to amend The High Court Judges Conditions of Services Act, 1954 with effect from 27.3.1982 to 31.10.1986 and thereby denying the rights of some of the High Court Judges retired between the said period to get the enhanced benefit. Number of representations have been submitted to the Government of India, but no positive action has been taken.

14. According to the petitioner he has rendered services as Vice Chairman, Central Administrative Tribunal between 1.11.1985 and 31.5.19 88. Though it is a pensionable service under Rule 8(1) of CAT Service Rules, pension has not been paid to the petitioner on the ground that he has already in receipt of Rs.4000/=, the maximum amount of pension payable to High Court

Judges and as such no pension is payable to him under proviso to Rule (2).

15. It is contended out that when once the services rendered in the Tribunal is made pensionable, everyone doing that service is entitled to claim pension irrespective of the fact as to who renders that service and the fact that a person has earned certain pension for his past services in another capacity cannot stand in his way of getting pension for the services rendered as Vice Chairman, CAT. The services rendered in the Tribunal being a pensionable service for some and non pensionable in the case of others. The proviso to Rule 8(2) of the Rules is clearly arbitrary, discriminatory and violative of Articles 14 and 16 of The Constitution and the said proviso has to be struck down as unconstitutional and consequential relief should be granted.

16. In W.P.No.394 of 1990 the very same petitioner after setting out identical set of facts has prayed for the issue of a writ of mandamus directing the respondents to sanction and grant additional DCRG of Rs.20,000/= over and above Rs.30,000/= already paid and also to pay the commuted value of one half of the amount ater giving credit to the amount already paid and total amount of pension, PEG deducted from salary from 1.11.1985 till 31.5.1988 when the petitioner held office as the Vice Chairman of the Central Administrative Tribunal, Madras.

IV - PETITIONER'S CASE IN W.P.No:4859 AND 4860 OF 1990:

17. In W.P.No:4859 of 1990, Mr.C.Venkataraman, Member of the Indian Audit and Accounts Service entered into Indian Audit and Accounts Service in the year 1951 and served in different capacities between 1951 to 1985. It is not necessary to set out the various posts which this petitioner held. On15.10.1985 the petitioner while he was working as Financial Commissioner and Ex officio Secretary to the Government of India, Department of Railways, was selected for appointment as a Member of the Additional Bench of the Central Administrative Tribunal, Madras established on 1.11.1985. The petitioner was requested to take action to seek retirement from the Government service in accordance with Rule 5(1) of the Rules. The petitioner was informed that he has to take up the office at the earliest since the Central Administrative Tribunal Bench had to be fully functional from 1.11.1985.

18. On 8.10.1985 the petitioner issued a notice of voluntary retirement from Government service in order to enable the Government of India to notify his appointment to the Central Administrative Tribunal. On 31.10.1985 the petitioner was informed that his voluntary retirement has been accepted by the President of India. While waiving the notice of a period of three months, the President of India was pleased to appoint the petitioner as Member of the Central Administrative Tribunal, Additional Bench at Madras. The retirement of the petitioner was effective from the afternoon of 31.10.1985. The petitioner was informed that pension is payable at the rate of Rs.2577 per month with effect from 1.11.1985 and the relief at the rate of Rs.25 per month or at the rate imposed from time to time. The petitioner opted for commutation of pension and a sum of Rs.1,11,120.25 has been paid and the pension has been reduced to Rs.1,718 per month with effect from 6.12.1985, besides Rs.25 per month towards relief. The petitioner was also sanctioned

DCRG of Rs.50000/=.

19. According to the Rules governing the post of Members, Central Administrative Tribunal the petitioner is entitled to receive a sum of Rs.3000/= as pay, but by virtue of the proviso to Rule 3, since the gross amount of retirement benefits including the pension equivalent of retirement gratuity aggregating to Rs.2,963.50 had to be deducted, the petitioner has received only a sum of Rs.36.50 per month towards pay for the months of November and December, 1985. On 7.5.1987 the petitioner made a representation

to the Hon'ble Minister of State, Department of Personnel and Training and to the Chairman, Central Administrative Tribunal regarding the effect of the Proviso to Rule 3.

20. The petitioner also pointed out that the appointment to the Tribunal as a Member or the Vice Chairman is not an reemployment, but it is an appointment to a statutory post which is governed by the provisions of the Administrative Tribunals Act and the Rules framed thereunder. The petitioner was compelled to seek retirement from service by virtue of Rule 5(1) of the Rules and therefore it should not be treated as reemployment but it could only be taken to be a fresh appointment. According to the petitioner the grant of pension is neither a bounty, nor a matter of grace, but it is a payment for the past services rendered and therefore the employees who retire from Government Service has a vested right to receive pension under the statutory rules for the services already rendered. Therefore any rule which prescribes deduction of the pension and the PEG to be made from the pay of the Post is arbitrary and illegal. In the case of reemployed pension who again joined Government service, the basis for introducing a rule or instruction which authorises the deduction of pension from the pay of the re-employed pensioner was that in the case if a Government Servant unless such deduction was made it would given an unintended benefit to a retired Government Servant as compared to serving Government servant who is holding the same post. But this reasoning has no application in the case of appointment to the posts like a Member or Vice Chairman in the CAT, where no serving Government servant could be appointed and it is obligatory to retire before his being appointed to such post.

21. According to the petitioner there is a distinction between reemployment and Government Servant and appointment to an independent post of judicial nature. The Government of India also by its letter dated 14.4.1996 addressed to Mr.S.P.Mukherjee, the then Member of the Principal Bench of the Tribunal at New Delhi informed that after careful consideration it had been decided that appointments to the Central Administrative Tribunal after their retirement from Government service cannot be treated as reemployment. The petitioner requested the Ministry that pension and other retirement benefits shall not be deducted from the pay of a Member of the Central Administrative Tribunal, but they are of no avail. The petitioner's representation was forwarded to the Central Government with an endorsement of the Vice Chairman who expressed his vie that the petitioner has made out a strong case and justifiable case for a suitable amendment to the Rules to provide for the fixation of pay without taking into consideration of the pension and PEG.

22. By seeking early retirement which the petitioner was obliged to do by virtue of Rule 5 of the Rules, the petitioner also lost sizeable amount from monthly recurring entitlement of pension as well as from his DCRG. This was because of the IV pay commission recommendations subsequently accepted by the Government and were given effect to only from 1.1.1986. Had the petitioner continued to serve till the normal date of retirement he would have been entitled for the calculation of pension at 50% of the ten months average emoluments as Secretary to Government where his pay would have been Rs.8000/= per month from 1.1.1986. So also in the case of DCRG. The petitioner was also paid Rs.20,000/= as gratuity. Had the petitioner continued he would have been paid a substantial sum towards DCRG. Subsequently the rule was amended from 1.6.1988 and PEG is not to be deducted from the pay.

23. When a person commutes 1/3rd of his pension on retirement, to which he is automatically entitled the commuted value is arrived at on the basis of multiplying the 1/3rd of the monthly pension by a figure which represents the number of years of pension given in a table, depending on the age of the applicant at the time of applying for such commutation so that a lump sum is paid to the applicant, thereby avoiding the need to make payment of 1/3rd portion of the pension every month. In other words, the Government purchases the value of 1/3rd of the pension by paying a lump sum and that is given as commuted pension. When PEG is arrived at, the exactly reverse process is applied to arrive at the monthly pension to which the lump sum gratuity paid on retirement is the equivalent.

24. According to the petitioner pension equivalent to a lump sum payment namely the DCRG is not liable to be deducted from the pay of a Post of a Member, CAT and there is no reason as to why the monthly pension is to be deducted. The petitioner also points out that in the case of Government Servants who are employed by Public Sector Undertakings, the pension which they received from the Government is not deducted from the monthly pay. In the case of Mr. G.Ramasamy, who was a member of the Audit and Accounts Service who was later appointed as Director of the Minerals and Metals Trading Corporation of India Limited he was in receipt of a pay of Rs.2700/= per month and in his case the pension which he was receiving from the Government was not deducted from the monthly pay and allowances. Moreover, he was also eligible for pro rata pension and DCRG based on the length of his qualifying service under the Government of India till the date of his permanent absorption in the Minerals and Metals Trading Corporation of India Limited. So also in the case of Mr.A.J.A.Tauro, another Indian Audit and Accounts Service, when he was appointed as Finance Director in the Indian Petro Chemicals Corporation Ltd.,. So also in the case of Shri P.S.Bajaj who was a Government servant and who was thereafter employed by the Indian Telephone Industries. In all those cases, pension was not deducted from the gross amount of pay and allowance, but in the case of members, Vice Chairman and Chairman of Tribunals established under The Administrative Tribunals Act, 1985 the pension is being deducted from the gross amount of of pay and allowances. There is no reason or rhyme for the members of this Tribunal alone should be treated differently.

25. The Government of India by O.M.No.2(90)68 BPE (GM) dated 8.11.1

968 also provided for payment of full salary in addition to the salary drawn by a Government of Indian Servant who is appointed in the Public Sector. The above attitude of the Government of India demonstrates individuous discrimination between the Government servants who are permanently appointed by public sector undertakings and Government Servants appointed as Member, Vice Chairman, or Chairman in the Central Administrative Tribunals. Such discrimination has absolutely no nexus to the object sought to be achieved and it is violative of Articles 14 and 16 of The Constitution. There is no reason at all to treat the members of the Administrative Tribunal with a step motherly treatment though it has been held that the said Tribunals are substitutes for the High Courts in Sampath Kumar's case.

26. The petitioner has also referred to the pay fixation of members who are drawn from the Government, from the Judiciary and from the Bar, the difference in pay fixation of the Members of the CAT to show the gross injustice meted in the matter of pay fixation. While a member of the Bar who has been appointed directly as Mr.N.R.Chandran who was directly appointed to the Tribunal was paid Rs.7600/= as net pay, while the petitioner who after his resignation was paid only Rs.36.50as on 1.11.1985, Rs.3785.70 on 1.1.1986, Rs.3885.70 on 1.11.1986 , Rs.3985.70 on 1.11.1987, Rs.4085.70 on 1.11.1988.

27. The petitioner made a number of representations drawing the attention of the Government of India. But there has been no consideration at all. The petitioner has explained the reasons for approaching this court in para 15 of the affidavit. IN the said background, the petitioner calls for the various reliefs including for a declaration that Rule 3 o the Rules is arbitrary, illegal and violative of Articles 14 and 16 and 300 of The Constitution of India, besides seeking for a mandamus directing the respondents to fix his pay from 1.11.1985 as prayed for without making any deduction of gross pension and/or PEG and pay the arrears of pay with effect from 1.11.1985.

V - COUNTER CASE OF THIRD RESPONDENT:

28. The third respondent filed a counter in W.P.Nos.393 and 394 of 1 990 setting out as follows:-

"(a) With regard to para 3 of the affidavit, it is submitted that the petitioner retired under Part-I of the first schedule to the High Court Judges (Conditions of Service) Act, 1954 (hereinafter to be called as ACT) on 29.11.1985. As on his date of retirement, the Act provided fro grant of pension at Rs.1600/= for each completed year of service, subject to a maximum of Rs.22,400/= per annum and a death cum retirement gratuity of Rs.30000/=(maximum) in lump sum at the rate of 20 days salary for each completed year of service. As such his case for pensionary benefits was settled accordingly. However, in pursuance of the Chief Justice's Conference held in 1985, further improvements in the Conditions of Service of the Judges of Supreme Court/High Court were made by Amendment Act, 1986. AS a result of the said improvements, the pension of High Court Judges was raised from Rs.1600 to Rs.3430 for each completed year of service subject to a maximum of Rs.48000/= per annum with effect from 1.11.1986. In pursuance of Supreme Court Order in W.P.No.502 of 1987 Justice S.B.Srivatsava retired Chief Justice Vs. Union of India, the benefit of enhanced rates/ scales of pension

introduced from 1.11.1986 onwards, were extended to pre 1 .11.1986 retired Judges with effect from 1.11.1986, irrespective of their date of retirement. Accordingly, the petitioner was allowed revised higher pension with effect from 1.11.1986 i.e., with prospective effect. By virtue o the provisions of Section 19 of the Act of 1954 read with the Civil Pension (Commutation of Pension) Rules, the Judges are entitled to commute one half of their pension. Rule 10 of said rule provides that-

"Retrospective revision of final pension-An applicant who has commuted a fraction of his final pension and after commutation his pension has been revised and enhanced retrospectively as a result of Government's decision, the applicant shall be paid the difference between the commuted value determined with reference to enhanced pension and the commuted value already authorised."

In view of the aforesaid provisions of Rule 10, the petitioner is not entitled to further commutation of pension out of the revised pension allowed prospectively with effect from 1.11.1986onwards. This aspect was also upheld by the Division Bench of Supreme Court in D.S. Nakara's Case - 1983 (1) SCC 305 para 61.

(b) With regard to para 5 of the affidavit, it is submitted that from the pay of a Chairman, Vice Chairman or a Member, who is in receipt of or has received or has become entitled to receive any retirement benefits by way of pension and or gratuity, etc., the same are to be deducted from the pay as Vice Chairman. This in accordance with proviso to Rule 3 of the Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman/Vice Chairman and Members) Rules 1985. The contention of the petitioner that for doing the same work a serving Judge gets a salary of Rs.8000/= and a retired Judge gets only Rs.4000/= is misplaced because the pension of Rs.400 0/= pm., to a retied Judge cannot be ignored to be taken into account. A person cannot draw a full salary from the Government and at the same time also draw pension from the Government. If such a view is taken then these appointments will mean favouring the retired Judges in the matters of salary etc., which is not the intention of Rules. In any case before being actually appointed a Chairman, Vice Chairman and Member in the Central Administrative Tribunal, they are made well aware of the conditions of service by which they will be governed including deduction of pension from their salary, along with the offer of appointment. There is no question of violation of Art.14 and 16 of the Constitution. On the contrary, if the contention of the petitioner is accepted, it may attract the provisions of Art.14 and 16 of the Constitution.

(c) With regard to Para 6 of the Affidavit, it is submitted that ti is true that as per proviso to Rule 3 as they stood before amendment effective from 1.6.1988, vide Notification dated 22.2.1989, pension equivalent of gratuity was also deducted from the pay of Vice Chairman. With effect from 1.6.1988, the Rule was amended and pension equivalent of Gratuity was no longer required to be deducted from the pay. The amendment was given retrospective effect from 1.6.1988. As the petitioner retired with effect from 31.5.1988, he could not get the benefit of this Amendment. It may also be mentioned that as and when amendments are made in the Rules to be effective from a specific date, such type of cases always come type, irrespective of the date of amendment.

(d) With regard to para 7 of the affidavit, it is submitted that the petitioner belonged to Part I of the first schedule to the Act of 19 54 and his entitlement for death cum retirement gratuity was governed by the provisions of Section 17-A(3) of the Act of 1954. On the date of his retirement, the said provisions provided for payment of maximum of Rs.30000/= in lump sum as DCRG and the same was allowed in his case. Justice S.Zaheer Hassan, retired under Part III from Allahabad High Court with effect from 1.17.19985. The amount of DCRG in the case of part III Judges is regulated by the provisions of Section 17-A(2) of the Act of 1954, read with rules/orders/notifications of their earlier pensionable service under the Union or State Government. On the date of retirment of Justice S.Zaheer Hassan, the provisions of Section 17-A(2) of the Act of 1954 read with U.P.Superior Judicial Service provided or grant of DCRG of Rs.50000/= (maximum) in lump sum at the rat of 15 days salary for each completed year of service to a member of the service who retired with maximum qualifying service of 3 3 years. Justice S.Zaheer Hassan, as on his date of retirement had 3 7 years 10 months and 19 days service including four completed years of service as High Court Judge. The Central Civil Service (Pension) Rules are also similar to that of U.P.Superior Judicial Service Rules. As Judges elevated from Bar do not get such a long term s that of a Part III Judge, the Central Civil Service (Pension) Rules were, therefore, modified for grant of higher amount of DCRG for each completed year of service i.e., 20 days salary for each completed year of service instead of 15 days salary, applicable to part III Judges. Petitioner had 15 years 10 month and 20 days service to his credit as on 31 .5.1985 for the purpose of Pensionary benefits. In fifteen years of service he earned DCRG what a Part III Judge would have earned in 20 years of service under Central Civil Service (Pension) Rules/U.P. Superior Judicial Service Rules. Thus, there is no violation of Article 14 , as contended by the petitioner.

(e) In regard to para 8 of the writ petitioner, it is submitted that the entitlement of DCRG of Part I Judges, to which the petitioner belonged, is regulated by the provisions of Section 17-A(3) read with Central Civil Service (Pension) Rules. In the case of Central Service Officers, the amount of DCRG was raised to Rs.50,000/= with effect from 31.3.1985. Keeping in view the increase in the said ceiling and applicability of Central Civil Service (Pension) Rules, with modifications as contained in Section 17-A(30 of the Act of 1954 to Judges elevated from Bar, the Chief Justices Conference held in 1985 recommended for increase in the ceiling of DCRG from Rs.30000/= to Rs.50,000/= and the same was accepted by the Government. The implementation of said recommendation involved Amendment of the Section 17-A(3) of the Act of 1954. After complying with nece ssary modalities, he enhanced ceiling of the DCRG became effective from 1.11.1986 onwards.

It is further submitted that in pursuance of the recommendations of the Fourth Central Pay Commission, the Central Government improved the conditions of service of Central Civil Service Officers with effect from 1.1.1986 onwards. One of the said improvements, was raising of ceiling of DCRG from Rs.50000/= to Rs.1,00,000/= in lump sum from 1 .1.1986 onwards. Justice Satish Chandra, who retired as Chief Justice with effect from 31.8.1986 under Part I of the first schedule to the Act of 1954 and was

sanctioned a DCRG of Rs.50,000/= too the matter to Supreme Court of India for grant of DCRG at par with Central Civil Service Officers. The Division Bench of Supreme Court allowed his Writ Petition No.764 of 1987 in its order of 29.9.1987. Accordingly, the ceiling on DCRG was raised to Rs.1,00,000/= with effect from 1.1.19 86 as per the High Court and Supreme Court Judges (conditions of service) Amendment Act, 1988."

It is contended by the third respondent that the petitioner in both the writ petitions are not entitled to any relief prayed for.

VI - COUNTER CASE OF RESPONDENT NO.1

29. On behalf of the first respondent the Under Secretary, Ministry of Law and Company Affairs has filed a counter affidavit. It is not necessary to set out the contents of the counter affidavit as there is no factual dispute. What is contended being that in terms of Proviso to Rule 10, the petitioners are not entitled to further commutation of pension out of the revised pension allowed prospectively with effect from 1.11.1986. It is pointed out by the first respondent that from the pay of Chairman or Vice Chairman or a Member who is in receipt of or has received or has become entitled to receive any retirement benefits by way of pension and or gratuity the same are to be deducted from the pay as Vice Chairman. This is in accordance with proviso to Rule 3 of the Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman/Vice Chairman and Members) Rules 1985. The pension drawn by a Judge cannot be ignored and it has to be taken into account.

30. According to Union of India, a person cannot draw a full salary from the Government while at the same time also draw pension from the Government. If such a view is taken then these appointments will mean favouring the retired Judges in the matters of salary etc., which is not the intention of Rules. At any rate before appointment the Vice Chairman or Member of the Central Administrative Tribunal being well aware of the conditions of service by which they will be governed including deduction of pension from their salary, along with the offer of appointment, there is no question of violation of Article 14 and 16 of the Constitution arises. It is true that as per the existing rules which was in force PEG was also deducted till 1.6.1988. AS the petitioner retired with effect from 31.5.1988, he could not get the benefit of the amendment. As regards the deduction of DCRG as well as the plea of discrimination advanced by the petitioner, it is submitted that there is no violation of Art.14. The entitlement of DCRG of Part I Judges is regulated by the provisions of Section 17 A(3) read with Central Civil Services (Pension) Rules and DCRG was raised to Rs.50,000/= with effect from 31.3.1985. After amendment of Section Section 17-A(3) of the Act, enhanced ceiling of the DCRG became effective from 1.11.1986 onwards. Pension to the Vice Chairman of Central Administrative Tribunal is governed by the CAT (Salaries and Allowances and conditions of Services of Chairman, Vice Chairman and Members) Rules 1985 which places a ceiling on the maximum amount of pension.

31. According to proviso to rule 8(2) the pension drawn or entitled to be drawn while holding office in the Tribunal, shall not exceed the maximum

amount of pension prescribed for a Judge of High Court. Therefore in no case the pension payable to the Vice Chairman can exceed to a pension payable to a High Court Judge. There is nothing unconstitutional in proviso to Rule 8(2) of the CAT Rules, 1985. The various contentions advanced in this respect are devoid of merits and the writ petitions are liable to be dismissed.

VII - ADDITIONAL COUNTER BY RESOPNDENT No.1

32. Another counter affidavit has been filed in Writ Petition Nos:4859 and 4860 of 1990 on behalf of the Union of India by the Desk Officer in the Ministry of Personnel reiterating the same contentions and contenting that the writ petitioner is not entitled to any relief in both the writ petitions. Identical objections have been raised in W.P.Nos:4859 and 4860 of 1990 as well. It is not necessary to refer to the same in detail herein.

VIII - SUMMARY OF CONTENTIONS ADVANCED BY PETITONERS

33. Mr.Vijay Narayan, learned counsel appearing for the petitioners in both the writ petitions contended that the retired employee has a vested right to receive pension under the statutory rules for the services already rendered by deduction of the gross pension, and Pension Equivalent to Gratuity from the salary of the petitioner, it would result in withholding of pension AS if it is a case of reemployment of a retired servant under the Government which is impermissible in law. The Government of India Orders issued from time to time refers to reemployment. The appointment as a Vice Chairman or Chairman is not reemployment, but it is an employment made to the respective post. That being the legal position, proviso to Rule 3 which virtually denies the right to draw pension for the service already rendered before accepting the post, by effecting deduction from the pay and allowances to the post the petitioner is appointed, the rule is arbitrary and violative of Art.14. According to Mr.Vijay Narayan, learned counsel, a member of the CAT hold Judicial Office and cannot be equated with a post in the Executive Wing of the Union and therefore they have been asked to seek voluntary retirement from the Government Service. The service of a Member cannot be termed to be reemployment which would mean that he continues in the Executive Wing of the Union, which would be in violation of basic concept of independence of judiciary. A person appointed as a Member of the Tribunal cannot be equated with a Government Servant who is reemployed on retirement. Proviso to Rule 3 is on reemployment a pensioner should not get full pension because that would mean that he draws his retirement benefits at the time of superannuation, thereby starts drawing pension and also receives full pay and equivalent of this would be that the reemployed pensioner would be drawing much higher emoluments than a similarly situated person who is performing the same duties.

34. It is contended that in respect of persons who have been absorbed in Public Sector, no deduction of the pension already drawn for such appointees is made and a person who is appointed will be at par with other employees of public enterprise in regard to pay fixation, besides they are entitled to receive pro-rata monthly pension on their resignation from Government service for the purpose of getting absorbed in the public enterprise. Very many persons getting absorbed in the public sector corporations and getting their pension for their earlier Government service in addition to the pay of the Post in which they are absorbed in the public

enterprise has been cited and when such liberal treatment is given to the Government Servants who get absorbed in Public Sector Enterprises, which is created and controlled by the Executive Wing of the State, there is no justification to give a step motherly treatment in respect of members of the Administrative Tribunals or chairman as the case may be. It is not a classification and there is no nexus at all. Classification if any must be based on intelligible differentia which distinguishes things that are grouped together from those that are left out of the group and this is per se discriminatory. The Rule 3 uses the expression "appointment" while the Union Government has been treating these appointees virtually as reemployment which construction is illegal and factually untenable. There is no justification at all to deny PEG from the salary and at any rate after the amendment of the Rule by Notification dated 22.2.1989. There has been a number of representations and various authorities at higher level have examined the matter and in fact accepted the views of the petitioners. But the Government for apriori consideration has not chosen to agree.

35. It is also pointed out for doing identical work different members with varying service backgrounds and even without any background of Government service get different pay as detailed in pages 16 to 18 of the affidavit filed in support of the writ petition. Principle of equal pay for equal work is violated. Persons doing the same work and discharging the same work and responsibilities cannot be classified into different groups and there is discrimination. Senior and more experienced members in CAT get less pay as compared to juniors. It is contended that the deduction of pension from the salary payable to a member or a vice Chairman or Chairman is illegal, unconstitutional. So also the deduction of PEG.

IX - CONTEST BY RESPONDENTS:

36. Per contra, Mr.V.T.Gopalan, learned Additional Solicitor General appearing for the respondents contended that having accepted the appointment subject to the Rules it is not open to the petitioners to contend that the Rule is unconstitutional. It is also contended that there is a clear classification and classification has a nexus and therefore the contention that such a classification is arbitrary or violative of Articles 14 or 16 is untenable. Challenge to the Rules as arbitrary or discriminatory or violative of Articles 14 and 16 is untenable.

37. In these two writ petitions, the following points arise for consideration:-

A. Whether the proviso to Rule 8 of The Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairman and Members) Rule 1985 is unconstitutional?

B. Whether the Rule of equal pay on the payment of salaries paid to Chairman, Vice Chairman and Members of The Administrative Tribunal is violated?

C. Whether the appointment of retired Judges or Government employees as Member/Vice Chairman/Chairman is reappointment within the meaning

of Pension Rules and Central Administrative Tribunal Conditions of Service Rules?

D. When the request to receive Pension is a fundamental right, whether the deduction of pension for the services already rendered from the salary of Vice Chairman/Member of Administrative Tribunal is valid in law?

E. Whether the deduction of Pension Equivalent of Gratuity towards lump sum payment of DCRG is valid and enforceable legally?

F. Whether the petitioners are entitled to the difference in DCRG as claimed by them?

G. To what relief, if any, the petitioners are entitled to in these writ petitions?

XI - ADMITTED FACTUAL MATRIX:

38. Factually, there is no dispute that Justice G.Ramanujam, petitioner in Writ Petition Nos.393 and 394 of 1990, was holding the post of High Court Judge between 11.7.1969 and 1.6.1985 and he has rendered in all Fifteen years and Ten months and twenty days of valuable service. He demitted office on reaching the age of superannuation on 29 .11.1985. He has also drawn DCRG of Rs.30,000/= in addition to the grant of pension of Rs.22,400/= per annum. He was also permitted to commute the pension. Justice G.Ramanujam was appointed as Vice Chairman of the Central Administrative Tribunal with effect from 1.11.1985 i.e., after a gap of five months from the date of his superannuation.

39. Mr.C.Venkataraman, who is the petitioner in W.P.Nos:4859 and 486 0 of 1990, a Member of the Indian Audit and Accounts Service, who entered the said service in 1951 was holding the post of Ex-officio Secretary to the Government of India, Department of Railways had to resign and accept the post of Member, CAT, Madras Bench. His resignation letter was accepted waiving the period of notice with effect from 31.10.1985. Mr.Venkataraman also assumed charge as Member CAT on 1.11.1 985. Mr.Venkataraman was drawing Rs.36.50 per month towards pay from November, 1985 onwards.

40. Administrative Tribunals were constituted under The Administrative Tribunals Act, 1985. The Madras Bench of the Tribunal was constituted on 1.11.1985. The said Legislation is in pursuance of Art.323 A of The Constitution and to provide matters connected therewith. Section 6 prescribes the qualification for appointment as a Chairman, Vice Chairman and other members. Section 8 fixes a term of office of Chairman, Vice Chairman and other members. Section 10 prescribes Salaries and allowances payable and the other terms and conditions of service including pension gratuity and other retirement benefits of the Chairman, vice Chairman and other members as may be prescribed by the Central Government. In terms of Section 11, the Chairman and vice chairman and members are ineligible to be appointed to the Government of a State or India. Section 28 excludes the jurisdiction of Courts except the Supreme Court in respect of service matters. Section 33 provides that the Act shall have overriding effect notwithstanding anything inconsistent

therewith containing in any other law for the time being in force. Section 35 confers powers on the Central Government to make rules including to provide for the salaries and allowances payable to and terms and conditions of service for Chairman, vice Chairman and other Members. Section 37 provides for laying the Rules before the Parliament and the procedure related thereto. In exercise of powers conferred under section 35(2)(d), The Central Administrative Tribunals (conditions of service, Pension etc.,) Rules 1985 for Chairman, Vice Chairman and Members which came into force on 10.8.1985.

XII - POINTS A, B AND C

41. The points framed could be considered together and answered as they are interrelated or interconnected. That apart, the contentions advanced are obviously no longer res integra and the substantial contentions have already been decided by various pronouncements of the Apex Court.

42. In Deokinandan Prasad v. State of Bihar, reported in 1971 (2) SCC 330 a Five Judges Bench of the Supreme Court held that pension is a property under Art.31(1) and by a mere executive order the Government has no power to withhold pension. It has also been further held that it is also property under Art.19(1)(f) and it is not saved by sub Art.(5) of Art.19. It was further held that denial of pension or the right to receive pension affects the fundamental rights guaranteed under Art.19(1)(f) and 31(1) of The Constitution. The Apex Court also laid down that for enforcement of pension which is a fundamental right a writ petition under Art.32 is maintainable.

43. The View of the Supreme Court in Deokinandan Prasad v. State of Bihar, reported in 1971 (2) SCC 330 has also been confirmed by a later Five Judges Bench of the Supreme Court in D.S.Nakara Vs. Union of India, reported in 1983 (1) SCC 305. The Apex Court laid down that Government Servants have the right to receive pension under the statutory rules. While discussing the question whether liberalised pension Scheme become operative to all pensioners or not, the Apex Court laid down the meaning of the expression "pension" and the reason for grant of pension.

44. In this respect, the Apex Court held thus:-

"20. The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deokinandan Prasad v. State of Bihar wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab v. Iqbal Sing.

Xx xx xx xx xx

xx xx xx xx xx

27. Viewed in the light of the present day notions pension is a term applied to periodic money payments to a person who retires at a certain age considered age of disability; payments usually continue for the rest of the natural life of the recipient. The reasons underlying the grant of pension vary from country to country and from scheme to scheme. But broadly stated they are (i) as compensation to former members of the Armed Forces or their dependents for old age, disability, or death (usually from service causes), (ii) as old age retirement or disability benefits for civilian employees, and (iii) as social security payments for the aged, disabled, or deceased citizens made in accordance with the rules governing social service programmes of the country. Pensions under the first head are of great antiquity. Under the second head they have been in force in one form or another in some countries for over a century but those coming under the third head are relatively of recent origin, though they are of the greatest magnitude. There are other views about pensions such as charity, paternalism, deferred pay, rewards for service rendered, or as a means of promoting general welfare (see Encyclopaedia Britannica, Vol. 17, p. 575). But these views have become otiose.
28. Pensions to civil employees of the Government and the defence personnel as administered in India appear to be a compensation for service rendered in the past. However, as held in Douge v. Board of Education a pension is closely akin to wages in that it consists of payment provided by an employer, is paid in consideration of past service and serves the purpose of helping the recipient meet the expenses of living. This appears to be the nearest to our approach to pension with the added qualification that it should ordinarily ensure freedom from undeserved want.
29. Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socioeconomic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical raison d'etre for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.
30. The discernible purpose thus underlying pension scheme or a statute introducing the pension scheme must inform interpretative process and accordingly it should receive a liberal construction and the courts may not so interpret such statute as to render them inane (see American Jurisprudence, 2d, 881).
31. From the discussion three things emerge : (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Article 309 and clause (5) of Article 148 of the Constitution;

(ii) that the pension is not an ex gratia payment but it is a payment for the past service rendered;
and
(iii) it is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the average emoluments drawn during last three years of service reduced to 10 months under liberalised pension scheme. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to retirement, that is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure."

45. Nakara's Case is the authority for the proposition that pension is generally understood in contra distinction to the one in service and those who render service and retire on superannuation or any other mode of retirement and are in receipt of pension are comprehended in the expression pensioners. Such pensioners form a homogeneous class which cannot be divided arbitrarily fixing an eligibility criteria unrelated to the purpose of revision of pension.

46. Their Lordships also held that the Pension Rules being statutory in character, the amended rules since the specified date accord differential and discriminatory treatment to the equals in the matter of commutation of pension is discriminatory. The Division which classified pension into two classes being artificial and arbitrary is not based on any rational principle and whatever principle if there be any, has not only no nexus to the objects sought to be achieved by liberalising the pension rules, but is counterproductive and runs counter to the whole gamut of the pension scheme.

47. The point whether the service in Central Administrative Tribunals is a reemployment in connection with the affairs of the Union and whether the Rules envisage linking of past service with the service in the Tribunals which is a quasi judicial body, was the subject matter of consideration in Union of India Vs. K.B.Khare and others reported in 1994 Supple.(3) SCC 502. In the said case, a Member of the State Judicial Service himself had to seek voluntary retirement from service before his being appointed as a Member of the Central Administrative Tribunal as required by Rule 5 of the CAT (Salaries, allowance and conditions of service of Chairman,Vice Chairman and Members) Rules 1 985, hereinafter referred to as the Rules, wanted both of his services to be clubbed so as to enable him to get single consolidated pension while placing reliance on Rule 16 of the Rules and CCS (Fixation of Pay of re-employed pensioners) order 1986. The High Court sustained the said claim.

48. However, their Lordships of the Supreme Court reversed the decision of the High Court. Rule 8 of the Rule was the subject matter of interpretation before the Supreme Court. The Apex Court further held that the service in CAT is not a reemployment in connection with the affairs of the Union, but it is an independent judicial service, the appointments in the CAT is on judicial basis and the pension relating to such post is clearly governed by the Rule 8 of the Rules which is exhaustive in nature.

49. The Apex Court in this respect held thus:-
"17. In our considered view, the High Court has gone wrong in considering the service in CAT as re-employment in connection with the affairs of the Union. On the contrary, an independent judicial service, the appointment in the CAT is on tenure basis. The pension relating to such post is clearly governed by Rule 8 of the Rules quoted above and at the risk of repetition, we may state it exhaustive in nature. If that be so, there is no scope for resort to Rule 16 at all. If the first respondent had to resign from Judicial Service because of the statutory requirement under Rule 5 of the Rules (quoted above), we are unable to see as to how both the services namely senior District Judge in the State Judicial Service and a Member in the CAT could be clubbed. Such a clubbing is not contemplated at all. From this point of view, we find it difficult to accept the reasoning of the High Court that the matter of option to club the two services for pension is a subject on which the Rules are silent and the residuary provision in Rule 16 of the Rules intends to fill the gap by supplementing the Rules by rules applicable to the Secretary to the Government of India.
18. Merely because while the first respondent was a Member of the State Judicial Service, he was governed by DCRB Rules of 1958, that cannot be pressed into service in view of the specific Rule 8 of the Rules. Consequently, the provisions relating to pensioners retired on invalid pension is not applicable. The Rules being unambiguous cannot be construed to confer better pensionary benefits. It is no argument to hold that had the first respondent continued in the State Judicial Service, he would have got a higher pension. There is no escape from Rule 8 of the Rules with regard to the grant of pension of Chairman, Vice-Chairman or the Members of the Tribunal. That being so, the question of liberally construing pension rules does not arise. On the same reasoning, the principle laid down in D.S. Nakara case1 is not applicable."

50. In Shiveshwar Prasad Sinha v. Union of India, reported in (19 85) 4 SCC 322, where a Judge of the High Court was reemployed as Chairman, Andhra Pradesh Administrative Tribunal, which appointment being contractual and as per the terms and conditions laid down by the Government of India he was entitled to remuneration equivalent to that of a High Court Judge, provided his pension and other retirement benefits admissible as High Court Judge do not exceed Rs.3,500/=.

51. While examining the question whether Pension Equivalent to Gratuity could be recovered or not, the Apex Court ruled thus:-
"5. We are satisfied that there is absolutely no justification for directing recovery of the pension equivalent of gratuity at the rate of Rs 170 per month. In fact, this amount appears to have been arbitrarily fixed. If the Judge had to be subjected to such a deduction, the entire gratuity was to be taken into account and it could not be confined to the sum paid to him as gratuity after deduction or adjustment. There could be a case where the entire gratuity had been adjusted against existing dues to be recovered and, therefore, nothing was paid in cash at the time of retirement. In such a case there would be no scope to demand any adjustment by way of pension equivalent of gratuity accepting the manner in which it has been done here. The method adopted will have the effect of serving the Judge if the amount of gratuity to

which he is lawfully and legitimately entitled."

52. In the light of the said pronouncement, the Union Government issued a Notification in this respect and recovery in respect of Pension Equivalent to Gratuity has been withdrawn. In the above case, the Supreme Court has not gone into the question with respect to the proviso to Rule 8 or validity of the said proviso.

53. The next question that arise for consideration is what is reemployment and whether appointment of a superannuated Judge to the Office of Chairman or Vice Chairman or Member of Administrative Tribunals is an appointment or reemployment? Since a contention was advanced in this respect, this requires to be considered.

54. In M.S. Chawla v. State of Punjab, reported in (2001) 5 SCC 358 , while examining an identical provision under the Consumer Protection Act and the Rules framed by the State of Punjab, the Apex Court held that the appointment of a District Judge after his superannuation to the post of President of the District Forum is a case of reemployment of a pensioner as he is in receipt of pension for the services rendered as a District Judge in accordance with the provisions in the Pension Rules. The challenge that the salary fixed under the Consumer Protection Act and the Rules framed thereunder cannot be altered and that pension amount of each of the appointee should not be deducted from the salary payable to the President of the District Consumer Forum has been turned down by the Apex Court.

55. While distinguishing the pronouncement in D.S.Nakara Vs. Union of India, G.B.Pattanaik,J., speaking for the Bench reiterated the conclusions and held thus:-

"7.....The appointment of a District Judge, after his superannuation as the President of the District Consumer Forum under the Consumer Protection Act, cannot but be held to be a case of re-employment of a pensioner inasmuch as the said District Judge is in receipt of a pension for the services rendered as a District Judge in accordance with the provisions contained in the Punjab Civil Services Rules, Vol. II. Since Rule 2.1 of Chapter II Vol. II unequivocally states that every pension shall be held to have been granted subject to the conditions contained in Chapter VII and Chapter VII conta ins Rule 7.18 as well as Note 3(a)(i), which have been extracted before, the conclusion is irresistible that the appropriate authority will have to decide the pay and allowances, which the retired District Judge is entitled to receive on being appointed as the President of the District Forum notwithstanding the fixation of such pay under the Rules framed under the Consumer Protection Act and while fixing the same, the principle underlined in Note 3(a)(i) has to be followed. This being the position, we see no infirmity with the government order dated 25-1-1996 and under the said notification the salary of re-employed District Judges as President of the District Consumer Forum, has rightly been fixed, taking into account the pension, which they are in receipt of, as retired District Judges. The contention of Mr Rao that the salary fixed under the Act and the Rules framed thereunder are being altered by an administrative order is of no force, in view of the legal provisions

enumerated above and in fact, it is the provision of the Punjab Civil Services Rules, dealing with the salary of re-employed pensioners, which governs the field. The other contention on the basis of the judgment of this Court in D.S. Nakara1, that pension is not a bounty is also of no consequence. In the aforesaid premises, we do not find any legal infirmity with the judgment of the High Court, requiring our interference under Article 136 of the Constitution. These appeals accordingly fail and are dismissed."
The point decided in the above pronouncement is in respect of an identical provision and the reasoning of the Supreme Court applies on all fours to the provisions in question.

56. In V.S. Mallimath v. Union of India,(2001) 4 SCC 31, the Apex Court examined Rule 3(b) proviso, which is identical to Rule 8 of the present Rule and by the said rule it has been provided that any pension which a Member has been in receipt for the services rendered earlier has to be deducted from the salary which under the rule has been indicated to be equal to the salary of a Judge of the Supreme Court. G.B.Pattanaik,J., speaking for the Bench, while repelling the contention that the office of Chief Justice of the High Court or a Judge of the High Court is constitutional post and it is not a service under the

Government and therefore there could be no deduction of the pension payable in respect of such office of Chief Justice or a High Court Judge, after referring to the earlier pronouncement in Union of India Vs. Prathibha Bonnerjea(1995) 6 SCC 765 as well as Gurugobinda Basu Vs. Sankari Prasad Ghosal (AIR 1964 SC 254) held that the expression whatever used in proviso to Rule 3(b) is therefore to be construed in the wider sense and the services rendered by a Judge or Chief Justice of a High Court must be held to be a service in connection with the affairs of the Union and as such the proviso to Rule 3(b) of the Rules is governing the case of a Chief Justice or a Judge of the High Court in determining the salary which he would be entitled to on his being appointed as the Human Rights Commission's Member.

57. In this respect, in Mallimath's Case, the Apex Court held thus:-
"4.....In the Rules, when the rule-making authority provided for a salary to be paid to a Member under Rule 3(b), a proviso was inserted for deduction from such salary, the amount of pension other than disability or wound pension, which such Member was in receipt of, in respect of any previous salaries. The intention of the rule-making authority is crystal clear that any pension which a Member has been in receipt of, for the services rendered earlier, has to be deducted from the salary, which under the Rules has been indicated to be equal to the salary of a Judge of the Supreme Court. The contention of the petitioner to the effect that the previous service as Chief Justice of a High Court not being one under the Government of the Union, must be held to be not covered by the proviso, cannot be accepted, reading the Rules as a whole. We have, therefore, no hesitation in coming to the conclusion that the proviso to Rule 3(b) would apply to the retired Chief Justice of India or the retired Chief Justice of a High Court and the pension which they are in receipt of, apart from the disability or wound pension, has to be deducted from their salary, which they are entitled to under the Rules. The contention of Mr Iyer appearing for the petitioner, on this score, therefore cannot be sustained."

58. Mr.Vijay Narayan, learned counsel appearing for the writ petitioners while referring to the pronouncement of the Apex Court in V.S. Mallimathi's case contended that Rule which provides for the deduction of pension has not been challenged and he is challenging the validity of the Rule in the present case. Though there is no discussion with respect to the validity of the Rule in V.S.Mallimath's case, but we are not persuaded to sustain the contention that proviso to Rule 8 is violative of Art.14 or as unconstitutional as there is no basis at all to invalidate the said proviso as violative of the constitutional provisions.

59. Incidentally, it was contended that the writ petitioners are entitled for equal pay for equal work like any other member of the Administrative Tribunal or Chairman or Vice Chairman as the case may be. In the present case, there is no dispute that there is any disparity in the scale. But what is sought to be denied is or set off is being component which the member or the Vice Chairman is entitled for the services rendered as a High Court Judge or Central service is sought to be set off as part of the remuneration or salary payable to the Members or Vice Chairman. Therefore it cannot be said hat there is disparity in the salary or that the members or Vice Chairman who on being appointed after retirement from High Court or other Central Service are being treated differently. Therefore no question of discrimination arises.

60. In Baskara Nambiyar, Vs. Union of India, reported in 1997 (10) SCC 469, the Apex Court held that payment of pension to High Court Judge whose term is less than seven years vis-a-vis with a longer tenure is not discriminatory, nor it offends Articles 14 and 16 of The Constitution. The Division Bench of the Supreme Court followed the decision in Union of India Vs. Deokinandan Agarwal, reported in 1992 Supple. (1) SCC 323 and rejected the plea of discrimination.

61. Relying upon Chairman, Railways Board and others Vs. C.R. Rangadhamaiah, reported in 1997 (6) SCC 623, it was contended that it is unreasonable and arbitrary to deny pension. But, in the present case, there is no denial of the pensionary benefit which right has accrued to the petitioners. But what is sought to be done is setting off the pension amount already received and fixing the salary or emoluments of a Member or Vice Chairman in terms of the statutory rule. The rule has an intendment and object. The Rule is in no way violative of Art.14 or Art.16.

62. On the facts, it may look as if the proviso to Rule 8 is very harsh and for the services that were rendered as Member or Vice Chairman only a paltry sum namely two figure sum being paid. Factually, the petitioners might have received a two figure amount or paltry sum in addition to the pension which they are entitled to draw, besides the Dearness Allowance and other allowances as admissible. But what has been provided for in the Act as well as the Rules is that had the High Court Judge or a Member of a civil service continued in service, his salary cannot exceed the salary which he will be normally drawing had he continued in office and that is the basic reason and basis for setting off the pension out of the salary payable under the Rules. This cannot be held to be unconstitutional or opposed to all

cannons of service jurisprudence.

63. In V.B. Raju v. Union of India, 1980 Supp. SCC 513, the Apex Court while examining an identical challenge to Rule as violative of Art.14, held thus:-

"18. The other contentions raised by the appellant ignore one basic reason which provides justification for the trichotomy operating right from the enforcement of the 1937 Order. He does not (and of course cannot) challenge that trichotomy for the period prior to the commencement of the Constitution because his objection to it is based on discrimination violative of Article 14 thereof. But then he has failed to realise what the Constitution itself enacted in paragraph 10 of its Second Schedule both before and after its amendment by the 1956 Act. Prior to November 1, 1956 (which is the date on which the 1956 Act came into force) sub-paragraph (4) of the said paragraph 10 provided for pension of Judges of the High Court of any State being governed by the provisions which were applicable to such Judges before the commencement of the Constitution. Those provisions were, as pointed out above, contained in the 1937 Order which initiated the trichotomy. The High Court was thus right in holding that the Constitution itself adopted that trichotomy.

19. Then came the 1954 Act which was brought on the statute book by Parliament in exercise of its legislative powers under Article 221(2) of the Constitution. The trichotomy introduced by the 1937 Order was repeated in the 1954 Act, till when it had been kept alive by subparagraph (4) above-mentioned. And that trichotomy is good not only because it was adopted by the Constitution till legislation was enacted under Article 221 (2) thereof but also because it was necessitated by reason of High Court Judges being drawn from three different sources.

20. Insofar as persons who had been members of the Indian Civil Service or of a State Judicial Service before being appointed as High Court Judges are concerned, the period of service put in by them in such Service has to be taken into account. On the other hand, High Court Judges recruited directly from the Bar do not have any prior service to their credit. All the High Court Judges, though holding equivalent posts, are thus not similarly situated, particularly in regard to the payment of pension and other retirement benefits. That is why different provisions were considered necessary in the case of each of the three categories in regard to payment of pension. The classification so made is a reasonable classification based on intelligible differentia having a proper nexus to the object to be achieved."

This pronouncement is a complete answer to the challenge advanced by the petitioners as to the validity of the Rule.

64. The contention that even if the petitioners had not accepted the appointment of Vice Chairman or member, they will be drawing the same emoluments as and by way of pension and therefore the payment of a paltry sum

of Rs.36 or a two figure sum is not a salary at all and it would not amount to equal pay or equal salary, is just requires to be mentioned for being rejected.

65. It is pointed out by Mr.V.T.Gopalan, learned Additional Solicitor

General the petitioners were aware of the Rules when they accepted the appointments and in particular proviso to Rule 8 and therefore when the petitioners are drawing the scales of pay as per the provisions of the Administrative Tribunals Rules read with the Act, it is not open to them to contend that their pension should not be set off or deducted.

66. We are not persuaded to sustain the contention that the proviso to Rule is either unconstitutional or violative of Art.14 or Art 1 9 or other Articles or other provisions of the Constitution and the contentions advanced cannot be sustained in the light of the above pronouncements and law laid down by the Apex Court.

67. Before parting with the case, we are constrained to observe that Mr.Justice G.Ramanujam, petitioner in W.P.Nos.393 and 394 of 1990, who had on reaching the age of superannuation, had not accepted the appointment as Vice Chairman, he would be drawing the very same sum by way of pension and had he continued as a Judge of the High Court without his being required to demit the office of the Judge, assuming for the purpose of argument that he has not attained the age of superannuation, he would be drawing the same quantum of salary as a Judge as well. This factual position and the rule provision pointed out by the learned Additional Solicitor General, we are persuaded to accept as against the contention advanced by Mr.Vijay Narayan.

68. Mr.Vijay Narayan, learned counsel for the petitioners persuasively pointed out that the petitioners need not have worked for a two figure sum, namely Rs.36 or thereabout for all the days or 25 days in a month and they could have as well spent their retired life peacefully. It is true that this may be a grievance. But the answer being that had Justice G.Ramanujam continued as a Judge of the High Court, if treating the period which he continued as a Vice Chairman, he would have drawn the same salary and he might not be drawing any amount more than that of what he was drawing as pension and though there is unintended hardship, that cannot be a ground to interfere in favour of the petitioners. Hence the Rule is upheld and all the contentions advanced fail.

XIII- CONCLUSION

69. In the light of the above discussions and while following the pronouncements of the Supreme Court, Points, A,B.C,D and G are answered against the petitioners.

70. Mr.Vijay Narayan, learned counsel for the petitioners while making his submission, represented that the petitioners are not pressing the relief, namely, direction to commute pension as per the revised rate since the petitioners are getting commuted pension at the revised rate and that apart there is only a marginal difference. The petitioners also did not press the relief regarding increased DCRG of Rs.5 0,000/= which came into effect from 1.11.1986. Hence, points E and F are answered accordingly.

71. In the result, all the writ petitions fail and they are dismissed without costs.

Index:yes
Website:yes
Gkv.

To,
1. Secretary to Government
Union of India,
Ministry of Law and Justice
(Department of Justice) New Delhi

2. Secretary to Govt.
State of Tamil Nadu
Public (Spl.B) Dept.,
Chennai-9

3. The Accountant General, Chennai-6

4. The Registrar, High Court,
Chennai-104